



INTERIOR BOARD OF INDIAN APPEALS

Thlopthlocco Tribal Town and Muscogee (Creek) Nation
v. Acting Muskogee Area Director, Bureau of Indian Affairs

29 IBIA 301 (08/29/1996)

Clarifying on reconsideration:
29 IBIA 241

Modified in part on reconsideration:
35 IBIA 27



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

THLOPTHLOCCO TRIBAL TOWN,	:	Order Granting Reconsideration
Appellant	:	and Clarifying Decision
	:	
MUSCOGEE (CREEK) NATION,	:	
Appellant	:	Docket Nos. IBIA 95-83-A
v.	:	IBIA 95-86-A
	:	
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 29, 1996

The Board issued a decision in these appeals on July 19, 1996. 29 IBIA 241. On August 26, 1996, the Board received a petition for reconsideration from the Muscogee (Creek) Nation.

The Nation first asks the Board to reconsider its conclusion that the Nation is not entitled to receive the revenues from minerals underlying certain lands held in trust for the Thlopthlocco Tribal Town. The Nation's argument goes to the question of whether the offset stipulation in Indian Claims Commission Docket 21 had the effect of repaying the United States for the funds it expended to purchase the lands in question. The Board concluded that it did not.

The Nation points out that the Area Director's February 1, 1995, decision included the statement "[N]otwithstanding the fact that the amounts expended by the United States for [the Town's] lands had been set off in the award to [the Nation], title to the purchased lands was not set over" (Area Director's Decision at 2). The Nation contends that the Area Director contradicted that statement in his brief before the Board, *i.e.*, stating in his brief that "[t]here is no conclusive evidence that the Town's purchased lands were included in the offset amounts" (Area Director's Brief at 21). In the Nation's view, "[t]his inconsistency is of itself sufficient basis for the Board's reconsideration of its decision" (Nation's Petition for Reconsideration at 2).

The Board finds it unnecessary at this point to consider whether the Area Director made inconsistent statements prior to the Board's July 19, 1996, decision. The proper time for the Nation to have raised the issue was during the briefing period for this appeal. The Board finds that, even if the Area Director did make inconsistent statements, that fact would be of no consequence in light of the Board's subsequent decision.

In its July 19 decision, the Board concluded that "the \$90,000 offset stipulation (in Docket 21) did not include funds expended by the United States in 1937 and 1938 to purchase lands for the Town." 29 IBIA at 253.

The Board believes that its conclusion in this regard was clearly stated. However, recognizing the possibility that the above-quoted statement from the Area Director's decision might be construed as a holding by the Area Director which the Board failed to disapprove, the Board now does so explicitly.

The Nation's remaining objections to the Board's conclusion regarding the offset stipulation in Docket 21 are simply reiterations of the arguments it made earlier. Those arguments have already been considered and rejected.

The Board reaffirms its conclusion that the offset stipulation did not include funds expended by the United States to purchase lands for the Town, as well as its conclusion that the Nation is not entitled to receive the revenues from minerals underlying the lands held in trust for the Town.

The second contention made in the Nation's petition for reconsideration is that the Area Director's decision improperly treated the revenues from minerals underlying Town lands as the trust property of the Town. It appears likely that the Nation has misunderstood the Area Director's decision in this regard. In any event, the Board's decision makes clear its conclusion that the revenues are not the trust property of the Town.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Nation's petition for reconsideration is granted. The Board's July 19, 1996, decision is clarified by the explicit disapproval of the following statement, which appears on page 2 of the Area Director's February 1, 1995, decision: "Notwithstanding the fact that the amounts expended by the United States for [the Town's] lands had been set off in the award to [the Nation]." In all other respects, the Board's July 19, 1996, decision is reaffirmed.

//original signed
Anita Vogt
Administrative Judge

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Kathryn A. Lynn
Chief Administrative Judge